

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20543

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CIVIL DIVISION

JAN 12 1971

Dear Dr. Allen:

As part of our regular audit activity at the Department of Health, Education, and Welfare (HEW), the General Accounting Office has been making a survey of the National Center for Health Services Research and Development (Center), Health Services and Mental Health Administration (HSMHA). During this survey, we received an inquiry from a member of Congress concerning the use of Government funds, under a Center-funded grant, to develop a shared computer system for hospitals which was subsequently transferred to a private company to the possible detriment of its competitors. Our review of this grant disclosed an area of administrative weakness which we believe merits your consideration for corrective action.

Effective January 1, 1967, the Public Health Service (PHS) of HEW awarded a grant (HM 00504) to the Sisters of the Third Order of St. Francis (Third Order), a religious group which operates eleven hospitals located in Illinois, Iowa, and Michigan, for a research project entitled, "Demonstration of a Shared Hospital Information System." The grant, which has since been renumbered HS 00083, was initially approved for a period of 3 years, from January 1, 1967, through December 31, 1969; the project period was subsequently extended without additional funds through January 31, 1971. Total costs reimbursed by HEW during the 3-year period were about \$1.4 million, subject to final settlement of the indirect costs. The Third Order also made a substantial cost-sharing contribution to the project.

The purpose of the project was to demonstrate the shared use, by a group of participating hospitals, of a central computer system to provide communication between various hospital departments and between physicians and hospitals, and to automate patient records and hospital operations, such as admitting, laboratory, and radiology.

The Third Order had previously demonstrated its ability to operate an automated system with associated hospitals through the establishment and operation of a shared business management computer system, which has been operational since 1964. This system, connected by a central computer to over twenty hospitals in the Midwest, provided for such functions as patient billing, accounts payable, payroll, and financial reporting. We were informed that no PHS funds had been used to develop the business management system.

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Near the end of the original project period, the Third Order submitted a proposal for a 2-year renewal of the grant and requested additional funds for direct costs totaling about \$2.6 million, plus an unspecified amount for indirect costs. After review and consideration by an HEW advisory group, the request was disapproved in March 1970. However, the project period was extended by the Center through January 31, 1971, to permit the grantee to complete certain analyses and to issue a final report on the project.

Effective March 1, 1970, the Third Order sold its entire Data Processing Division to the McDonnell Automation Company, a division of the McDonnell Douglas Corporation. The operating personnel were offered their choice of remaining with the Third Order or of accepting positions with McDonnell Automation; they all chose employment with the latter. McDonnell Automation also entered into a long-term service contract with the Third Order to provide all data processing services required by the hospital group.

The principal investigator, now an employee of McDonnell Automation, has advised the Center that the transaction between the Third Order and McDonnell Automation specifically excluded any proprietary rights to the systems developed with grant funds. He stated, however, that the computer programs used in the systems were disseminated to McDonnell Automation as property in the public domain. He further stated that these programs were documented on magnetic tape by the Third Order to be used to fulfill requests, at a nominal charge, of any individual or corporation requesting this information. Although the principal investigator had originally reserved his right to disseminate the programs for general use until the final report is published, we were informed that both he and the Third Order have now decided to release the program tapes to anyone who requests them before publication of the report.

We reviewed the sale and acquisition agreement between the Third Order and McDonnell Automation. Under this agreement, the Third Order sold and assigned all proprietary rights to the business management system, identified as a "Centralized Real-Time Accounting System for Hospitals," to McDonnell Automation and waived and disclaimed any proprietary interest in the "Shared Hospital Information System" which had been developed with grant funds. The agreement does not indicate that the Third Order received any monetary consideration for the hospital information system.

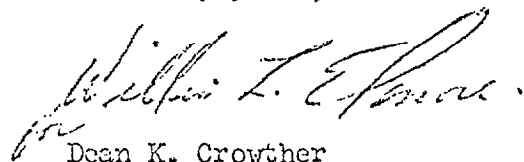
On the basis of our review of pertinent Federal law and HEW regulations, we find no provision covering the dissemination, before publication, of information developed under HEW-funded grants. Discussions with representatives of the HEW Office of the General Counsel confirmed that there is no such provision, either in regulation or statute.

Although there was no violation of law or regulation involved in this matter, we believe that McDonnell Automation gained a potential advantage over its competitors as a result of the transfer to it of the Third Order's

Data Processing Division and that HEW grant funds played some part in the development of the capabilities of that Division. In our opinion, the benefits obtained from the investment of Federal funds should be available, as much as possible, to all potential beneficiaries on an equal basis. We are therefore requesting that you consider the advisability of establishing grant conditions which would prevent (1) the premature disclosure of valuable information developed with Federal funds to anyone who could use it for the purpose of making a profit and (2) the transfer to a profit-making company, during the period of a grant or within a reasonable period thereafter, of an organization or facility, or any significant part thereof which has been developed or enhanced with the use of grant funds.

Please advise us as to whether you believe such grant conditions would be practicable and whether you contemplate implementation of this or any other means of strengthening your present policy on this matter. We shall be pleased to discuss this matter in greater detail with you or members of your staff, if you so desire.

Sincerely yours,



Dean K. Crowther
Assistant Director

Dr. Ernest M. Allen, Deputy Assistant Secretary
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